IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
Income Tax Application No.88 of 2002

The Commissioner of Income-tax. .. Petitioner
v/s.
Skefco India Bearing Co.Ltd. .. Respondent

Mr.A.N.Kotangale for petitioner.

Mr.Shoeb Khan i/by Mr.Prem Ranga for respondent.

CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.

DATED : 13th November 2006

P.C. :

1. Heard the learned Counsel for the parties.

2. The assessment year relevant for the purposes of the Application is the Assessment Year 1982-83. The Assessing Officer held that the fees receivable from Associated Bearing Co.Ltd. were in the nature of income from royalty and chargeable to tax in India. That order was partly reversed by the CIT (Appeals). When the matter was carried to the Tribunal, the Tribunal dismissed the Appeal filed by the Department vide its order dated 17th February 1993. The Tribunal followed its order dated 17th January 1992 in the case of the Respondents itself for the Assessment Year 1980-81.

3. The Revenue made an Application that the following question be referred to this Court for its determination:-

> " Whether on the facts and in the circumstances of the case, the tribunal was right in law in holding that 50% of the fees received by the assesee is in the nature of technical services fees and hence not taxable in India? "

The Application was rejected by the Tribunal stating that it had only followed the decision which was taken in the earlier year on an identical question. Therefore, it inclined to make a Reference.

4. When the matter came up on earlier dates, it was adjourned from time to time to enable the Counsel for the petitioner to take instructions and to inform the Court as to whether the order passed concerning the earlier assessment year has been further carried in Appeal or what had happened to that order. Mr.Kotangale appearing for the petitioner has received the instructions from the concerned ITO wherein he has stated that the record of those earlier years is not

available. Since the Revenue is not in a position to inform as to what had happened to the earlier years, we have to take it that the assessment of the earlier years has remained undisturbed. Therefore, there is no reason to find fault with the Tribunal when it has followed the same yardstick for the concerned assessment year.

5. In the circumstances aforesaid, the Application is rejected.

6. We record the statement of Mr.Kotangale appearing for the petitioner that the costs, as directed on the earlier date, have been paid to the respondent.

7. Mr.Khan appearing for the respondent, however, has taken instructions and states that the respondent is not insisting on costs. He is, therefore, returning the cheque to the Department which he has handed over to Mr.Kotangale. In view of the statement of Mr.Khan, we record that the order directing payment of costs stands withdrawn.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)